IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 57 of 1990

The Commissioner of Income Tax ... Applicant.
vs.

Maharashtra Sugar Mills Ltd., ... Respondent

Mr. Ashok Kotangale. Sr. Counsel for Applicant.
Mr. B. J. Pardiwala i/b.
Rajesh Shah & Co., for Respondent.

CORAM:V.C.DAGA AND A. S. AGUIAR JJ.

Date: 7th July, 2005.

P. C.:

1. The questions of law referred to this court for opinion under section 256(1) of the Income-tax Act, by the Tribunal at the instance of the assessee are as follows:

> 1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to a deduction for the amount of Rs.1,79,851/- transferred, out of the sale proceeds, to the Molasses Storage Fund?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not liable to be taed on the additional price of Rs.42,16,201/- recovered by the assessee?

2. Counsel for both sides agree that the questions referred to above for our opinion have already been covered either by the judgment of this court or that of the Supreme Court.

3. So far as the first question is concerned, both parties agree that the same is covered by the judgment of this court in the case of **Somaiya Orgeno- Chemicals Ltd., vs. Commissioner of Income Tax** reported in [1995] 216 ITR 291 (Bom.) and also that of **Commissioner of Income Tax vs. New Horizon Sugar Mills P. Ltd.,** reported in (2004) 269 ITR 391 (S.C.). In view of the above , we answer the first question in the affirmative, that is, in favour of the assessee and against the Revenue.

4. So far as the second question is concerned both paries agree that the same is also covered by the decision in the case of **Commissioner of Income Tax v. Seksaria Biswan Sugar Factory Pvt. Ltd.**, reported in **[1992] 195 ITR 778 (Bom.), in the case of Commissioner of Income Tax vs. Kesar Sugar Works Ltd., reported in [1999] 239 ITR page 398 (Bom.).** In view of the above, we answer the above question in the affirmative, i.e., in favour of the assessee and against the revenue.

5. This reference stands disposed of in the above terms with no order as to costs.

(V. C. DAGA J.) (A. S. AGUIAR J.)